

## RCW 77.120: Ballast Water Law

**Rationale for WDFW Emergency Rule Making**

The WDFW ANS Coordinator recently formed a Ballast Water Rule Making Advisory Group made up of formal Ballast Water Work Group (BWWG) members and interested parties. This stakeholder group assisted the department in rule making for support of existing ballast water laws under RCW 77.120 and new requirements per E2SSB 5923 that will become effective on July 22. The implementation of permanent rule making will not become effective until December 3, 2007 at the earliest and it is likely to take 2-4 months longer due to contentious issues. This will result in significant problems implementing the new laws without rules required or necessary to support them.

| Name                    | Affiliation                            |
|-------------------------|--|
| Allen Pleus             | WDFW – Chair                           |
| Randy Marshall          | Ecology                                |
| Kevin Anderson (absent) | PSAT (now Puget Sound Partnership)     |
| Captain Mike Moore      | Pacific Merchant Shipping Association  |
| Lon Cain                | Pacific Merchant Shipping Association  |
| Jordan Royer            | Pacific Merchant Shipping Association  |
| Christian Mollitor      | Holland America Lines                  |
| Rich Berkowitz          | Pacific Coast Transportation Institute |
| Grant Kirby             | NW Indian Fisheries Commission         |
| Bruce Wishart           | People for Puget Sound                 |
| Jerry Joyce             | Seattle Audubon                        |
| Bill Stubblefield       | Parametrix                             |
| Kevin Reynolds          | Glosten Associates                     |
| Russ Herwig             | University of Washington               |
| Jeff Cordell            | University of Washington               |
| Peter Soles             | University of Washington               |

Draft emergency rules language was discussed at a meeting with the advisory group on June 21 and the results were sent out to the full BWWG and interested parties for comments on June 22. BWWG includes representatives of other state and federal agencies, the US Coast Guard, the Columbia River Steamship Operators Association, public ports, petroleum transportation industry, and the shellfish industry. The proposed underline/ strikeout emergency rule language is attached and has been approved by the advisory group. No party has expressed opposition to the proposed emergency rules. Rationale for emergency rule making is noted below by Chapter 220-77 WAC section.

**WAC 220-77-090****Ballast water management and control – Reporting and sampling requirements****Section (1)** [OTS p.1]

Rule Purpose: Provide specific information on who is required to file Ballast Water Reporting Forms and requirements for submission to department.

Necessity to Change: Current statute exempts vessel reporting if they do not intend to discharge ballast water. E2SSB 5923 Sec. 9(1)(b) amended to require all vessels to report.

**Sections (1), (1)(a), (1)(b), and (1)(c)** [OTS p.1]

Rule Purpose: Provide specific information on how and where to file Ballast Water Reporting Forms and requirements for submission to department.

Necessity to Change: Previous rule contradiction that has not been corrected and problematic. Stakeholder group would like to use emergency rules to clarify immediately. Current WAC rule language “must” contradicts RCW 77.120.040(1) language “may” - correct rule to allow ballast water reporting forms to be filed directly with department and clarify language in subsections (a), (b), and new (c).

**Section (4)** [OTS p.3-7]

Rule Purpose: Provide specific information on implementing the Interim Ballast Water Exchange Program. This program provided baseline information to the department on vessels entering state waters and their expectations for exchange or treatment.

Necessity to Change: Rule states they may be fined \$500 if not filed – no longer valid department requirement. Delete entire section as expired on July 1, 2006. Vessels no longer need to file an Interim Ballast Water Management Report Form.

**NEW SECTION (4)** [OTS p.7-8]

Rule Purpose: Define safety exemption filing conditions and requirements.

Necessity to Change: E2SSB 5923 Sec. 10(4), (6) require rules “shall” be adopted regarding safety exemption and current rule does not address this issue. New rule necessary to provide authority to implement law and enhance public safety.

**NEW SECTION (5)** [OTS p.8]

Rule Purpose: Define safety exemption review protocols to determine if warranted and if compliance plans or alternative strategies are necessary. Define safety exemption fee and guidance for assessment up to \$5,000.

Necessity to Change: E2SSB 5923 Sec. 10(6) requires rules “shall” be adopted regarding safety exemption conditions and requirements. Emergency language required for public safety reasons. First, compliance plans and alternative strategies will prevent future discharges of unexchanged or untreated ballast water. Second, shipping industry believes vessel operators may conduct unsafe actions if safety exemptions are perceived as illegal. E2SSB 5923 Sec. 13 provides optional authority (“may”) to adopt rules for fee assessment. New rule necessary to provide authority to implement laws.

**NEW SECTION (6)** [OTS p.8-9]

Rule Purpose: Define civil penalty assessment criteria up to \$27,500.

Necessity to Change: E2SSB 5923 Sec. 12(2) requires rules “shall” be adopted regarding standards for determining amount of penalty and current rules do not address this issue. New rule necessary to provide authority to implement law.

**WAC 220-77-095****Interim ballast water discharge standard approval process****Sections (2) & (3)** [OTS p.10-16]

Rule Purpose: Define interim ballast water treatment system application and approval process for use in waters of the state. Interim process was developed to encourage conversion to treatment-based ballast water systems on vessels.

Necessity to Change: Requires immediate change as department has determined that process is not within fiscal year 2007-09 funding and management capacity due to striking of E2SSB 5923 Sec. 11 authorizing the Ballast Water Work Group that was funded and staffed through the governor’s office. Additionally, process is not directly required under RCW 77.120.040(5)(a). Proposed emergency language will still allow approvals as desired by stakeholders, but by a streamlined process using established external ballast treatment approval in lieu of department assessment that incurs the expense of a stakeholder science and maritime advisory panel system.